

**REMARKS**

Claims 1-38 are pending in the present application. Reconsideration of the claims is respectfully requested.

**I. Examiner Interview**

Applicants thank Examiner Elamin for the courtesies extended to Applicants' representative during the January 5, 2005 telephone interview. During the interview, the difference between the presently claimed invention and the prior art were discussed. Examiner Elamin agreed that the prior art did not teach all of the features of the presently claimed invention. Therefore it is Applicants' understanding that, pending an update search by Examiner Elamin, the present claims are in condition for allowance. The substance of the interview is summarized in the remarks of the sections which follow.

**II. Allowable Subject Matter**

Applicants thank Examiner Elamin for indicating claims 2, 4, 10-12, 16, 18, 24-26, 28 and 36-38 allowable. However, for the reasons stated hereafter, Applicants respectfully submit that all of the claims are directed to allowable subject matter and the application is in condition for allowance.

**III. Claim 30**

Claim 30 is rejected under 35 U.S.C. § 102(e) but is similar in subject matter to that of claims 4 and 18. Additionally, claim 30 is not addressed in the rejection under 35 U.S.C. § 102(e). Therefore, Applicants respectfully submit that the subject matter of claim 30 is also allowable at least for the reasons stated in the Office Action with regard to claims 4 and 18.

**IV. 35 U.S.C. § 102, Alleged Anticipation, Claims 1, 3, 5, 7-9, 13-15, 17, 19, 21-23, 27, 29-31 and 33-35**

The Office Action rejects claims 1, 3, 5, 7-9, 13-15, 17, 19, 21-23, 27, 29-31 and 33-35 under 35 U.S.C. § 102(e) as being allegedly anticipated by Kubala et al. (U.S. Patent No. 6,209,106 B1). This rejection is respectfully traversed.

As to claims 1, 9, 13, 14, 15, 23, 27 and 35, the Office Action states:

Claims 1, 9, 13, 14, 15, 23, 27 and 35, Kubala teaches a method for managing a set of virtual clocks in a data processing system [*title, abstract*], the method comprising:

responsive to receiving a request to set a clock for a partition [*col. 9, lines 32-33*] in which the request includes a time, setting an offset equal to an elapsed time counter state of a counter [*abstract, column 2, lines 44-56, col. 9, lines 32-36*]; and

storing the time and the offset in association with a partition [*abstract, column. 9, lines 29-30*].

Office Action dated October 19, 2004, page 2.

Claim 1, which is representative of the other rejected independent claims 13, 15 and 27 with regard to similarly recited subject matter, reads as follows:

1. A method for managing a set of virtual clocks in a data processing system, the method comprising:

responsive to receiving a request to set a clock for a partition in which the request includes a time, setting an offset equal to an elapsed time counter state of a counter; and

storing the time and the offset in association with a partition.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 21 U.S.P.Q.2d 1031, 1034 (Fed Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that Kubala does not teach every element of the claimed invention arranged as they are in the claims. Specifically, Kubala does not teach responsive to

receiving a request to set a clock for a partition in which the request includes a time, setting an offset equal to an elapsed time counter state of a counter.

Kubala is directed to a system for specifying offsets from an external time reference (ETR) for selected logical partitions of a partitioned information handling system. In the Kubala system, each logical partition has a logical time-of-day (TOD) clock which may be set independently of the host system clock by specifying an epoch offset from the host clock. The Kubala system operator is presented with a display panel in which the operator may specify the magnitude and sign of an ETR offset for each logical partition selected to have an ETR offset. Each logical partition, upon being activated, issues a Store Clock (STCK) instruction to read its own logical TOD clock as well as a Store ETR (STETR) instruction to read the ETR. If the logical partition has a specified ETR offset, the logical partition manager simulates the STETR instruction by adding or subtracting the ETR offset to the real ETR time and returning the modified value to the partition; otherwise, the logical partition manager returns the real ETR time to the partition. If the read ETR time (as returned by the STETR instruction) differs from the read logical clock time, the logical partition issues a Set Clock (SCK) instruction to reset the logical partition clock to the ETR time. The logical partition manager simulates this latter instruction by computing the difference between the two times and storing the difference in an epoch offset field for the partition.

Thus, in the Kubala system each logical partition may have an epoch offset from the host clock, where the epoch offset is set by an operator who specifies a magnitude and sign for an external time reference (ETR) offset and the ETR offset being compared to real ETR time and a logical time clock. Kubala does not set an offset equal to an elapsed time counter state of a counter, in response to receiving a request to set a clock for a partition in which the request includes a time, as recited in the instant claims. The Office Action alleges that this feature is taught in the abstract, column 2, lines 44-56 and column 9, lines 32-36, which read as follows:

A method and apparatus for specifying offsets from an external time reference (ETR) for selected logical partitions of a partitioned information handling system. Each logical partition has a logical time-of-day (TOD) clock which may be set independently of the host system clock by specifying an epoch offset from the host clock. A system operator is presented with a display panel in which the operator may specify the

magnitude and sign of an ETR offset for each logical partition selected to have an ETR offset. Each logical partition, upon being activated, issues a Store Clock (STCK) instruction to read its own logical TOD clock as well as a Store ETR (STETR) instruction to read the ETR. If the logical partition has a specified ETR offset, the logical partition manager simulates the STETR instruction by adding or subtracting the ETR offset to the real ETR time and returning the modified value to the partition; otherwise, the logical partition manager returns the real ETR time to the partition. If the read ETR time (as returned by the STETR instruction) differs from the read logical clock time, the logical partition issues a Set Clock (SCK) instruction to reset the logical partition clock to the ETR time. The logical partition manager simulates this latter instruction by computing the difference between the two times and storing the difference in an epoch offset field for the partition. The invention permits sets of logical partitions to be synchronized to different clock values, either for test purposes or operation in different time zones.

(Abstract)

In general, the present invention relates to a method and apparatus for synchronizing logical partitions of a logically partitioned machine to an external time reference (ETR) clock value. Each logical partition has a logical clock capable of being set to a specified logical clock value. In accordance with the invention, an ETR offset from the ETR clock value is specified for each of a set of selected logical partitions, and the logical clock of each of the selected logical partitions is set to a logical clock value offset from the ETR clock value by the ETR offset specified for that partition. Each logical clock may comprise a time-of-day (TOD) clock, and the ETR offsets may be specified by receiving input from a system operator.

(Column 2, lines 44-56)

in response to a request from a logical partition to read the host clock value, arithmetically combining the host clock value with the epoch offset stored for the partition to generate a logical clock value that is returned to the partition as a host clock value;

(Column 9, lines 32-36)

In these sections, Kubala describes combining a host clock value with an epoch offset value in response to a request from a logical partition to read the host clock value. However, Kubala teaches in response to a request from a logical partition to set the host clock value to a new clock value, storing a new epoch offset for said partition that is generated as the difference between the new clock value and the host clock value (see

column 9, lines 43-47). Thus, Kubala does not teach to set an offset equal to an elapsed time counter state of a counter, in response to receiving a request to set a clock for a partition in which the request includes a time. In fact, the terms “counter” and “elapsed time” do not appear in any section of the Kubala reference.

Claim 9, which is representative of the other rejected independent claims 14, 23 and 35 with regard to similarly recited subject matter, reads as follows:

9. A method for obtaining a time associated with a partition in a data processing system, the method comprising:  
responsive to receiving a request for the time associated with a partition,  
retrieving a time base and an offset associated with the partition;  
retrieving a counter value from a counter; and  
identifying the time using the counter value, the time base, and the offset  
associated with the partition. (emphasis added)

The Office Action fails to provide a section of Kubala that teaches retrieving a counter value from a counter; and identifying the time using the counter value, the time base, and the offset associated with the partition. As discussed above, Kubala fails to teach a counter. Applicants respectfully submit that there is no section of Kubala that teaches the emphasized features recited in independent claims 9, 14, 23 and 35.

Thus, Kubala does not teach each and every feature of independent claims 1, 9, 13, 14, 15, 23, 27 and 35 as is required under 35 U.S.C. § 102. At least by virtue of their dependency on independent claims 1, 15 and 27, the specific features of dependent claims 3, 5-8, 17, 19-22, 29, 30 and 31-34 are not taught by Kubala. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 3, 5, 7-9, 13-15, 17, 19, 21-23, 27, 29, 30, 31 and 33-35 under 35 U.S.C. § 102.

Furthermore, Kubala does not teach, suggest or give any incentive to make the needed changes to reach the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement Kubala such that an offset is set equal to an elapsed time counter state of a counter, in response to receiving a request to set a clock for a partition in which the request includes a time, one of ordinary skill in the art would not be led to modify Kubala to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion or incentive to modify Kubala in this manner, the presently claimed invention can be reached only through an improper

use of hindsight using the Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

**V. 35 U.S.C. § 103, Alleged Obviousness, Claims 6, 20 and 32**

The Office Action rejects claims 6, 20 and 32 under 35 U.S.C. § 103(a) as being unpatentable over Kubala et al. (U.S. Patent No. 6,209,106 B1). This rejection is respectfully traversed.

Claims 6, 20 and 32 are dependent on independent claims 1, 15 and 27 and, thus, these claims distinguish over Kubala for at least the reasons noted above with regards to claims 1, 15 and 27. Moreover, the Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. In re Fritch, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of Applicants' disclosure. Id. Therefore, absent some teaching, suggestion, or incentive in the prior art, Kubala cannot be properly modified to form the claimed invention. As a result, absent any teaching, suggestion, or incentive from the prior art to make the proposed modification, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of Applicants' disclosure a model for the needed changes.

In view of the above, Kubala fails to teach or suggest the specific features recited in independent claims 1, 15 and 27, from which claims 6, 20 and 32 depend. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 6, 20 and 32 under 35 U.S.C. § 103.

**VI. Objection to Claims**

The Office Action has stated that claims 2, 4, 10-12, 16, 18, 24-26, 28 and 36-38 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any

intervening claims. Applicant respectfully submits that all of the claims are directed to allowable subject matter and the application is in condition for allowance.

**VII. Conclusion**

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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